

General Information Letter: Petition to include Illinois residents on composite returns cannot be granted absent a showing that doing so will be more convenient for both the taxpayers and the Department of Revenue.

September 21, 2005

Dear:

This is in response to your letter dated August 3, 2005, in which you request permission for LIMITED PARTNERSHIP to include Illinois resident partners on its composite returns. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at [www.revenue.state.il.us](http://www.revenue.state.il.us).

In your letter you have stated the following:

This letter is being submitted as an appeal to the decision rendered in the letter dated May 31, 2005, which denied our petition to include all partners in the above-mentioned partnership in a composite return for the calendar year ending December 31, 2005.

LIMITED PARTNERSHIP (Taxpayer) will be required to file an income tax return for the calendar year 2005. They are planning to file a composite return on behalf of the partners and to pay the tax due with such return. Per Illinois regulation Section 100.5100(c), we are asking that you grant permission to include the Illinois residents in this composite filing. Our reasons for this petition are as follows:

- ?? The partnership is currently owned by 435 investors, and there are a significant number of partners entering and leaving the partnership each year, for example there were 80+ partners either entering or leaving the partnership in 2003 alone. Filing a composite return for all partners would ensure the correct information for each partner, as well as the timely remittance of the tax to the State of Illinois.
- ?? Based on the number of partners, it would be administratively unfeasible to send quarterly checks to each IL resident, in hopes that they would submit the required estimated tax payment to the Department of Revenue on a timely basis, as well as sending the correct amount of tax due for the eligible non-resident investors to the Department of Revenue. Allowing the Taxpayer to submit the entire amount of tax due on the income apportioned to Illinois as one quarterly payment, would greatly reduce the administrative burden on the Taxpayer, as well as significantly reduce the administrative burden on the Department.
- ?? Allowing the Taxpayer to include all partners in the composite filing would be more conducive of prompt receipt of the tax by the Department. This method of filing would simplify the tracking of all tax liability associated with this Taxpayer's income generated in the State of Illinois, thereby saving valuable

resources of the Department of Revenue. \

?? The proposed method of filing would achieve the same if not higher degree of compliance in filing and remitting the proper amount of tax.

The above facts were submitted in our request to file a composite return for all of the investors (see copy of letter dated January 25, 2005). Since the time of filing this request, a significant fact has changed. The Taxpayer is planning on becoming a registered partnership to allow for ownership of the partnership by over 500 investors.

We believe that filing a composite return on behalf of all partners in the LIMITED PARTNERSHIP is the only way to achieve the proper level of compliance and would be administratively effective for both the Taxpayer and the Department of Revenue. We request that you accept this petition as evidence and grant the Taxpayer the right to file a composite return on behalf of all partners in the partnership beginning with the 2005 tax year.

## **Response**

Section 502(f) of the Illinois Income Tax Act (35 ILCS 5/502) provides:

The Department may promulgate regulations to permit nonresident individual partners of the same partnership, nonresident Subchapter S corporation shareholders of the same Subchapter S corporation, and nonresident individuals transacting an insurance business in Illinois under a Lloyds plan of operation, and nonresident individual members of the same limited liability company that is treated as a partnership under Section 1501 (a)(16) of this Act, to file composite individual income tax returns reflecting the composite income of such individuals allocable to Illinois and to make composite individual income tax payments. The Department may by regulation also permit such composite returns to include the income tax owed by Illinois residents attributable to their income from partnerships, Subchapter S corporations, insurance businesses organized under a Lloyds plan of operation, or limited liability companies that are treated as partnership under Section 1501 (a)(16) of this Act, in which case such Illinois residents will be permitted to claim credits on their individual returns for their shares of the composite tax payments.

Pursuant to this provision, the Department of Revenue has adopted 86 Ill. Admin. Code Section 100.5100(c), which provides:

Individuals, trusts, and estates that are residents of Illinois may be included in a composite return if the authorized agent files a petition with the Department of Revenue and the petition is granted. The Department shall grant the petition if the authorized agent clearly demonstrates that no other method of filing would achieve the same degree of compliance and administrative ease for both the Department and the taxpayers. Factors to be considered in granting the petition include: the quantity of partners or shareholders involved; the inability of the authorized agent to file the composite return except in this manner; and the availability of a reliable method for

claiming credit on the separate returns pursuant to Section 100.5712.

If LIMITED PARTNERSHIP were allowed to include Illinois resident partners in composite returns, those partners would still be required to compute their Illinois income tax liability by including amounts passed through from LIMITED PARTNERSHIP, and claiming a credit for taxes paid on their behalf on the composite return. In order to insure compliance, the Department would be required to track payments made by LIMITED PARTNERSHIP on behalf of each partner, while there is no equivalent task required of the Department for partners excluded from the composite returns. Moreover, LIMITED PARTNERSHIP would be required to report its payments to Illinois in order to allow this tracking, a burden it would not have but for the inclusion of the resident partners on its composite returns. Also, both the Department and LIMITED PARTNERSHIP would have additional tracking problems for partners who elect to be included on the composite return for one year and not for another. Finally, because Illinois (unlike the Internal Revenue Service) does not require a partners to include partnership income pro-rata throughout the year in computing his or her estimated tax liability, there is no reason for a partnership to make quarterly distributions to allow partners to make estimated tax payments based on the partnership's income. Accordingly, your proposal would increase, rather than decrease, the administrative burden on LIMITED PARTNERSHIP and on the Department, and your petition cannot be granted.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton  
Deputy General Counsel – Income Tax